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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SMARTPHONERECORDS, LLC, a  
California limited liability company,  
DAMION HOLLOMON, and  
REYNA CARRASCO,

Plaintiffs,

v.

THE UNIVERSITY OF SOUTH  
CAROLINA, et al.,

Defendants.

No. 2:17-CV-0479-KJM-AC

ORDER

Plaintiff SmartPhoneRecords, LLC (“SmartPhone”), a California company, developed a cellphone application for artists’ use in selling music worldwide. Hoping to create a “version 2.0,” SmartPhone registered to participate in a startup-accelerator program in South Carolina. But SmartPhone left disappointed: Version 2.0 was never created; instead the application data was inexplicably erased. SmartPhone and its two owners sue a number of South Carolina defendants associated with the start-up program. Defendants move in separate motions to dismiss for lack of jurisdiction, or alternatively to transfer venue to South Carolina. Mot. One, ECF No. 58; Mot. Two ECF No. 66; Mot. Three, ECF No. 67-1. Plaintiffs oppose. ECF Nos. 70, 72. The court submitted the motions on June 11, 2018. ECF No. 77.

1 As explained below, the court DENIES the motions to dismiss but GRANTS the  
2 motions to transfer.

3 I. BACKGROUND

4 SmartPhone is co-owned by two California residents, plaintiffs Damion Hollomon  
5 and Reyna Carrasco. First Am. Compl. (“FAC”), ECF No. 51, ¶¶ 1-3. Each defendant is a South  
6 Carolina resident associated with the program at issue. *Id.* ¶¶ 4-16 (listing defendants). The  
7 program, called “firedUP” is a four-month, in-residence mentorship opportunity for startups in  
8 South Carolina. *Id.* ¶ 24. firedUP is managed by a nonprofit, defendant University of South  
9 Carolina Incubator (“USC Incubator”). *Id.* ¶¶ 4, 24. Defendant 52 App, Inc. (“52App”) helps  
10 firedUP participants develop cellphone applications specifically. *Id.* ¶ 8. Several individual USC  
11 Incubator and 52App employees are also named as defendants. *Id.* ¶¶ 10-16.

12 Plaintiffs discovered firedUP through an online advertisement. *Id.* ¶ 21. Although  
13 participating meant relocating to the “deep south,” plaintiffs felt the opportunity was “too good to  
14 pass up.” *Id.* ¶ 25. They contacted firedUP’s directors and negotiated a Program Agreement in  
15 which they transferred a percentage of their company in exchange for a \$25,000 cash investment  
16 paid over time and program enrollment. *Id.* ¶ 27; Program Agreement, FAC Ex. 2 (signed Feb. 2,  
17 2015). Plaintiffs relocated to South Carolina to begin the program on February 12, 2015. FAC  
18 Ex. 1.

19 Within weeks, plaintiffs’ firedUP mentors urged plaintiffs to also contract with  
20 defendant 52App for more focused application-development assistance. *Id.* ¶ 8. Plaintiffs  
21 agreed. The contract, negotiated and signed in South Carolina, gave plaintiffs application-  
22 development assistance in exchange for a percentage of SmartPhone ownership. 52App  
23 Agreement, FAC Ex. 3 (executed on unspecified date in March 2015). For the duration of the  
24 firedUP program, plaintiffs worked primarily with 52App.

25 Two days before the firedUP program ended, and right before plaintiffs were  
26 supposed to demo Version 2.0, their “entire database” deleted, causing them to lose all work they  
27 had done before and during the program. *Id.* ¶ 32. Defendants “feigned ignorance” about how  
28 this happened. *Id.* ¶ 33. Given this setback, 52App agreed to continue working remotely with

1 plaintiffs after plaintiffs returned to California. *Id.* ¶ 34. When plaintiffs’ new application finally  
2 launched in December 2015, it fell far below plaintiffs’ expectations. *Id.* ¶ 39. Meanwhile, a  
3 fellow firedUP participant, defendant Tradeversity, Inc., launched a similar application that  
4 mimicked confidential information plaintiffs shared during the program. *Id.* ¶ 38.

5           After unsuccessful attempts to discuss their concerns with 52App, plaintiffs  
6 publicly accused 52App of luring them to South Carolina to destroy the application. *Id.* ¶¶ 41-42.  
7 Almost immediately, 52App sued SmartPhone in South Carolina state court for defamation,  
8 breach of contract and tortious interference. *Id.* ¶ 42(a)-(c). Because plaintiffs could not afford to  
9 defend the suit, the court entered default judgment on all claims. *Id.* ¶¶ 43-44. 52App then  
10 flooded plaintiffs’ systems with internet traffic in the form of “a direct denial of service attack,”  
11 costing plaintiffs \$8,000 in Google charges. *Id.* ¶ 45.

12           Based on these allegations, plaintiffs bring eight claims. Six claims are pled  
13 against “all defendants,” without differentiation: Intentional infliction of emotional distress  
14 (“IIED”); fraud; conversion; interference with prospective economic advantage; unlawful,  
15 fraudulent and unfair business practices; and unjust enrichment. *Id.* ¶¶ 46-49, 56-62. Plaintiffs  
16 also bring a breach of contract claim against 52App, *id.* ¶¶ 63-68; and a breach of fiduciary duty  
17 claim against all entities except Tradeversity, and against five individuals: USC Incubator director  
18 Harry Huntley; and four persons who jointly own 52App., William Kirkland, Charles Hardaway,  
19 Christopher Thibault and Brenden Lee. *Id.* at 15-16.<sup>1</sup>

## 20 II. MOTIONS TO DISMISS

21           Defendants move to dismiss for lack of personal jurisdiction or for improper  
22 venue, arguing this lawsuit is insufficiently related to this forum to justify litigating the case here.  
23 Mot. One at 11-24; Mot. Two at 10-18; Mot. Three at 8-15.

24           The court declines to dismiss on either basis. First, venue is proper here. A civil  
25 action may be brought in “a judicial district in which a substantial part of the events or omissions  
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27           <sup>1</sup> The complaint erroneously restarts its paragraph numbering on page 15, beginning with  
28 the fifth claim, and so the court here references pages and/or line numbers for the latter portion of  
the complaint.

1 giving rise to the claim occurred.” 28 U.S.C. § 1391(b)(2). Because defendants’ allegedly  
2 tortious acts damaged plaintiffs’ California-based business, venue is proper here. *See, e.g.,*  
3 FAC ¶ 14 (alleging defendant destroyed their business); *Myers v. Bennett Law Offices*, 238 F.3d  
4 1068, 1076 (9th Cir. 2001) (reversing dismissal for improper venue; finding because “at least one  
5 of the ‘harms’ suffered by Plaintiffs . . . was felt in Nevada . . . a substantial part of the events  
6 giving rise to the claim occurred in Nevada. Thus, venue was proper.”). That defendants  
7 remained in South Carolina the entire time does not change this conclusion. *Miller v. S & S Hay*  
8 *Co.*, No. 1:12-CV-01796-LJO, 2013 WL 1281589, at \*4 (E.D. Cal. Mar. 27, 2013) (focus is not  
9 on where defendants were when they committed alleged wrongs). The motions to dismiss for  
10 improper venue are DENIED.

11 Because the interest of justice supports a transfer of venue under 28 U.S.C.  
12 § 1404(a), as explained more fully below, the court declines to examine personal jurisdiction.  
13 *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467 (1962) (court may transfer cases “whether the court  
14 in which it was filed had personal jurisdiction over the defendants or not.”); *Microsoft Corp. v.*  
15 *Hagen*, No. CIV-F-09-2094-AWI-GSA, 2010 WL 11527312, at \*1 (E.D. Cal. Aug. 30, 2010)  
16 (same); *Kawamoto v. CB Richard Ellis, Inc.*, 225 F. Supp. 2d 1209, 1211 (D. Haw. 2002) (same).  
17 Accordingly, the motions to dismiss for lack for personal jurisdiction are DENIED as MOOT.

### 18 III. VENUE TRANSFER

19 Defendants alternatively move to transfer to the District of South Carolina under  
20 28 U.S.C. § 1404(a). *See* Mot. One at 24-26; Mot. Two at 18-19; Mot. Three at 15-17.

21 Section 1404(a) permits court to exercise discretion, “[f]or the convenience of  
22 parties and witnesses, [and] in the interest of justice,” to transfer an action “to any other district  
23 where it might have been brought.” 28 U.S.C. § 1404(a); *Jones v. GNC Franchising, Inc.*, 211  
24 F.3d 495, 498 (9th Cir.2000) (emphasizing court’s broad discretion).

25 The transfer analysis is two-fold. The court first determines whether the case  
26 could have been brought in the forum to which the transfer is sought. *Van Dusen v. Barrack*,  
27 376 U.S. 612, 616 (1964) (citing 28 U.S.C. § 1404(a)). If so, the court goes on to make an  
28 “individualized, case-by-case consideration of convenience and fairness.” *Jones*, 211 F.3d at 498.

1           A. Step One: Whether the Suit Could have been Brought in South Carolina

2           The action could have been brought in South Carolina. Because all defendants  
3       reside in South Carolina, both venue and personal jurisdiction are proper there. FAC ¶¶ 4-16; *see*  
4       28 U.S.C. § 1391(b)(1) (venue is proper “in a judicial district in which any defendant resides, if  
5       all defendants are residents of the State in which the district is located.”); *see also Goodyear*  
6       *Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011) (personal jurisdiction over a  
7       corporation exists in whichever forum the corporation regards as home). The first step of the test  
8       is satisfied.

9           B. Step Two: Multi-Factor Fairness Test

10          The court also assesses whether the interest of justice and convenience of the  
11       witnesses and parties warrants transfer. *Jones*, 211 F.3d at 498-99.

12          The following non-exhaustive factors guide the analysis: (1) Where the relevant  
13       agreements were negotiated and executed; (2) which state is most familiar with the governing  
14       law; (3) plaintiff’s choice of forum; (4) the parties’ contacts with the forum; (5) the contacts  
15       relating to the plaintiff’s cause of action; (6) litigation costs in one forum versus the other;  
16       (7) ability to compel witnesses to appear in either forum; (8) sources of proof; (9) forum selection  
17       clauses; and (10) public policy considerations. *Id.* The forum selection clause and compulsory  
18       process factors are neutral as there is no such clause and no need for process, respectively. The  
19       other factors are analyzed below.

20          The party seeking transfer must make a “strong showing” that these factors weigh  
21       in its favor. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).  
22       In deciding whether to transfer venue, courts may consider facts beyond the pleadings and need  
23       not accept all allegations as true. *Cf. Murphy v. Schneider Nat’l, Inc.*, 362 F.3d 1133, 1137 (9th  
24       Cir. 2004); *Glob. Decor, Inc. v. Cincinnati Ins. Co.*, No. CV 11-2602-JST FMOX, 2011 WL  
25       2437236, at \*2 (C.D. Cal. June 16, 2011).

26               1. Place of Contract Negotiation and Execution

27          On balance, this factor favors transfer. Defendants were in South California the  
28       entire time they negotiated, executed and performed the contracts at issue. FAC ¶¶ 24, 30.

1 Although plaintiffs were in California when they negotiated and signed the Program Agreement,  
2 the terms of that agreement were clear: Plaintiffs had to relocate to South Carolina for the  
3 program’s duration. FAC Ex. 2 § 1.4 (“[Plaintiffs] shall reside in Columbia, South Carolina as of  
4 the Commencement Date and remain resident through the completion of the Development  
5 Phase.”); *cf. Makinen v. Little*, No. CIV.S-06-01887FCDGGH, 2006 WL 3437529, at \*3 (E.D.  
6 Cal. Nov. 27, 2006) (“In determining . . . where performance or breach of the contract occurred,  
7 the court focuses on the activities of defendants rather than the activities of plaintiff.”); *see*  
8 *also Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1371-72 (11th Cir. 2003) (same); *Woodke v.*  
9 *Dahm*, 70 F.3d 983, 985 (8th Cir. 1995) (same). As for the 52App contract, it was fully  
10 negotiated and signed in South Carolina, and was intended to be performed there. *See* FAC ¶ 30.  
11 That 52App offered to continue helping plaintiffs remotely after plaintiffs’ return to California  
12 does not change that performance of the contract itself was restricted to South Carolina. *See id.* ¶  
13 34. Accordingly, despite plaintiffs’ considerable ties to California, this factor favors transfer. *Cf.*  
14 *Makinen*, 2006 WL 3437529, at \*4 (finding transfer appropriate even though the “Plaintiff ha[d]  
15 substantial contacts with this forum because of his residence [in California] and ownership of a  
16 commercial tour business in this forum.”).

## 17 2. Which Forum is Most Familiar with Governing Law

18 South Carolina law governs key issues in this dispute. Although the Program  
19 Agreement does not specify what state’s laws govern disputes arising under the contract, it does  
20 provide, “the laws of South Carolina . . . govern the construction of this agreement.” FAC Ex. 2  
21 at 7 (Agreement § 7.5, entitled “Law Governing Construction of Agreement.”). Where there is no  
22 express choice of law clause, courts focus on where the contracts were intended to be fully  
23 performed in identifying the applicable law. *Shanze Enterp., Inc. v. Am. Cas. Co. of Reading, PA*,  
24 No. 2:14-CV-02623-KJM, 2015 WL 1014167, at \*3–4 (E.D. Cal. Mar. 5, 2015) (citing cases).  
25 Here, the parties intended the terms of both agreements to be performed in South Carolina before  
26 the program ended. *See* FAC ¶ 32 (explaining all application-development should have ended  
27 with an an-residence demo); *id.* Ex. 2 § 1.1 (program duration is 24 weeks, ending with a demo  
28 day); *id.* § 2.2 (outlining payment schedule ending on demo day).

1           Relatedly, defendants correctly note that the default judgment awarded  
2 against plaintiffs and for the benefit of 52App may trigger preclusion under the *Rooker-*  
3 *Feldman* doctrine.<sup>2</sup> Mot. One at 9. If so, South Carolina law would govern the required  
4 analysis. The *Rooker-Feldman* doctrine forbids federal courts from revisiting claims that  
5 are inextricably intertwined with state court decisions. *Bianchi v. Rylaarsdam*, 334 F.3d  
6 895, 900 n.4 (9th Cir. 2003). Here, in support of their IIED claim, plaintiffs’ allegations  
7 reference the South Carolina default judgment that rescinded the 52App contract. *See*  
8 FAC ¶¶ 42-44; *see also* Opp’n One, ECF No. 70 at 3-4. Specifically, plaintiffs argue the  
9 state judgment, and 52App’s pursuit of it, constitutes IIED and a “prior restraint” on free  
10 speech. Opp’n at 3-4. This “indirect challenge [against the state judgment] based on  
11 constitutional principles,” could trigger *Rooker-Feldman*. *See Murphy v.*  
12 *Schwarzenegger*, No. CIVS-09-2587-JAM DAD, 2010 WL 3521958, at \*7 (E.D. Cal.  
13 Sept. 8, 2010) (quoting *Bianchi*, 334 F.3d at 900 n.4). If so, South Carolina state law will  
14 determine whether the claims pending in this suit are barred. *See Noel v. Hall*, 341 F.3d  
15 1148, 1164 (9th Cir. 2003) (quoting *GASH Assoc. v. Village of Rosemont*, 995 F.2d 726,  
16 728–29 (7th Cir. 1993)).

17           Because a court located in South Carolina is better positioned to apply its  
18 law on these major issues, this factor favors transfer. *See Van Dusen v. Barrack*, 376  
19 U.S. 612, 645 (1964) (recognizing advantage to transferring case to state “in which the  
20 federal judges are more familiar with the governing laws”); *Coffey v. Van Dorn Iron*  
21 *Works*, 796 F.2d 217, 219, 221 (7th Cir. 1986) (explaining “it is also considered  
22 advantageous” to have federal judges try a case “who are familiar with the applicable  
23 state law.”).

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27           <sup>2</sup> This doctrine is named after the two Supreme Court cases from which it derives: *Rooker*  
28 *v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462  
(1983).

1                   3. Plaintiffs' Choice of Forum

2                   Ordinarily plaintiffs' choice of forum is afforded great deference. *See Decker*, 805  
3 F.2d at 843 (defendants must make a "strong showing" of inconvenience to overcome plaintiffs'  
4 choice of forum). But there are exceptions, one of which is when "the action has little connection  
5 to the chosen forum." *Shanze*, 2015 WL 1014167, at \*5 (citation omitted); *see also Saleh v. Titan*  
6 *Corp.*, 361 F. Supp. 2d 1152, 1157 (S.D. Cal. 2005) (collecting cases applying this exception).

7                   Here, the only connection to California is that the individual plaintiffs and  
8 corporate plaintiff reside here. The offering of the firedUP program was strictly limited to South  
9 Carolina and persons residing there. FAC ¶ 26. Plaintiffs voluntarily relocated to South Carolina  
10 to join the program, knowing it was run by a South Carolina entity, required relocating to the  
11 "deep south," and that all performance would occur in South Carolina. *Id.* ¶¶ 26-30. California  
12 of course has an interest in its residents, but under these facts plaintiffs' California residency is an  
13 insufficient justification for suing fourteen South Carolina-based defendants here. *Cf. Pacific Car*  
14 *& Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968) (emphasizing "if the operative facts  
15 have not occurred within the forum of original selection and that forum has no particular interest  
16 in the parties or the subject matter, the plaintiff's choice is entitled only to minimal  
17 consideration."); *cf. Makinen*, 2006 WL 3437529, at \*4 (deciding same where plaintiff lived and  
18 operated business in original forum). Plaintiffs' choice of forum disfavors transfer, but here only  
19 slightly.

20                   4. Parties' Forum Contacts and Contacts Relating to Plaintiffs' Claims

21                   These two factors weigh the relative advantage of litigating the dispute in the  
22 original forum versus the forum to which transfer is sought. *See Jones*, 211 F.3d at 498.

23                   Here, besides plaintiffs, all parties' contacts relevant to this dispute are in South  
24 Carolina. Defendants are all South Carolina residents and entities that intentionally limited their  
25 business activities to South Carolina. FAC ¶¶ 4-16. Defendants did not commit any of the  
26 alleged contract breaches, fiduciary breaches or torts within California. To the contrary, plaintiffs  
27 unilaterally pursued the South Carolina program by responding to an online advertisement and  
28 voluntarily relocating to South Carolina once chosen to participate. *Id.* ¶¶ 21-27. South Carolina



1 residency was a non-negotiable prerequisite to enrollment. *See id.* Ex. 1. This dispute centers  
2 primarily on conduct that occurred in South Carolina while plaintiffs were still there. *Id.* ¶ 26  
3 (“Hardaway explained that, during their stay in South Carolina for a few months, Plaintiffs would  
4 receive intensive mentoring and support for their plans to refine the [] App and expand its market  
5 share.”), ¶ 27 (“Hardaway also told Plaintiffs that they would be a ‘perfect fit’ for Columbia,  
6 South Carolina, and that Plaintiffs’ stay there would culminate in a presentation of version 2.0 . . .  
7 at the conclusion of the firedUP program”), ¶ 33 (application data “wiped out” while in South  
8 Carolina), ¶ 38 (“Defendant Tradeversity . . . which had been incorporated in South Carolina . . .  
9 launched a mobile app that was based on Plaintiff LLC’s intellectual property”), ¶ 47 (“After  
10 luring Plaintiffs . . . to South Carolina and using Plaintiff LLC’s intellectual property to assist  
11 Defendant Tradeversity to develop a mobile app, Defendants conspired to destroy LLC’s business  
12 by, *inter alia*, deleting all the data on which that business operated, followed by a factually and  
13 legally baseless lawsuit [in South Carolina]”). The parties’ contacts with the forum favor transfer.  
14 *Shanze*, 2015 WL 1014167, at \*5 (deciding same).

#### 15 5. Litigation Costs

16 Technology now alleviates many of the burdens of distance litigation, rendering  
17 this factor in many ways obsolete. *Foster v. Nationwide Mut. Ins. Co.*, No. 07-04928, 2007 WL  
18 4410408, at \*6 (N.D. Cal. Dec. 14, 2007); *Cohen v. State Farm & Cas. Co.*, No. 09-1051, 2009  
19 WL 2500729, at \*6 (E.D. Cal. Aug. 14, 2009) (same). Nonetheless, “‘because litigation costs are  
20 reduced when venue is located near the most witnesses expected to testify,’” and most witnesses  
21 here reside in South Carolina, this factor slightly favors transfer. *Park*, 964 F. Supp. 2d at 1095  
22 (quoting *Bunker v. Union Pac. R.R. Co.*, No. 05-04059, 2006 WL 193856, \*2 (N.D. Cal. Jan. 23,  
23 2006)). Plaintiffs concede most witnesses are in South Carolina, arguing only that because the  
24 two plaintiffs “of very limited means” live in California, transfer is not in the interest of justice.  
25 *See Opp’n One* at 22-23. Plaintiffs specifically aver they did not have the “means of identifying  
26 and hiring a South Carolina practitioner” to defend them when they were sued in that state by  
27 52inc, Decl. of Damion Hollomon, ECF No. 70-1, ¶ 25, and that their current attorneys are not  
28 licensed to practice in South Carolina and “will be unable to represent” them there upon transfer,

1 *id.* While this court is not blind to the attritional effect litigation can have, plaintiffs do not say  
2 their counsel could not obtain pro hac vice status in South Carolina, or that they now would be  
3 unable to find local counsel to move forward the case they have initiated, following transfer.

4 In any event, although the fairness and cost to plaintiffs “is a factor to be  
5 considered,” § 1404(a) is more concerned with the fairness and convenience “of non-party  
6 witnesses.” *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005) (citation and  
7 quotations omitted); *see also Burke v. USF Reddaway, Inc.*, No. 2:12-CV-02641-KJM, 2013 WL  
8 85428, at \*4 (E.D. Cal. Jan. 8, 2013) (“It is axiomatic that convenience of nonparty witnesses is  
9 frequently the most important factor in the section 1404(a) calculus.”) (citing cases).

#### 10 6. Sources of Proof

11 To the extent witness testimony will be taken before trial by deposition, this factor  
12 strongly favors transfer. “The convenience of witnesses is often the most important factor in  
13 resolving a motion to transfer.” *Park v. Dole Fresh Vegetables, Inc.*, 964 F. Supp. 2d 1088, 1095  
14 (N.D. Cal. 2013) (citation omitted).

15 Here, all witnesses besides plaintiffs are in South Carolina, where all defendants  
16 conduct their business, where both contracts were performed, and where most conduct relevant to  
17 the dispute occurred. Most evidence, therefore, is likewise located in South Carolina. This factor  
18 strongly favors transfer. *Shanze*, 2015 WL 1014167, at \*6 (deciding same).

#### 19 7. Public Policy Considerations

20 Although California courts have some interest in litigating issues pertaining to  
21 their own residents, as shown through the careful consideration of each factor discussed above,  
22 the facts here establish a tie much stronger to South Carolina. *Cf. Makinen*, 2006 WL 3437529, at  
23 \*4 (finding transfer appropriate despite plaintiffs’ residence and business ties to forum).  
24 “Conversely, South Carolina courts have a significant interest in litigating a dispute that involves  
25 a contractual arrangement between and the possible tortious activity of two of its resident  
26 corporations, many employees at said corporations, and allegedly tortious conduct that took place  
27 on its own soil.” *Functional Pathways of Tenn., LLC v. Wilson Senior Care, Inc.*, 866 F. Supp.  
28 2d 918, 932 (E.D. Tenn. 2012). As noted above, South Carolina appears to have another public

1 interest at stake: Plaintiffs attack, at least indirectly, an existing South Carolina state court  
2 judgment that rescinded the same contract plaintiffs allege 52App has breached. FAC ¶ 42; *see*  
3 Thibault Decl. ¶ 11 (declaring South Carolina judgment “rescinded the agreement . . . for lack  
4 of consideration” and found plaintiffs “made defamatory statements about 52Apps and its  
5 officers and employees.”). This factor favors transfer.

#### 6 8. Relative Docket Congestion

7 Although neither party addresses the issue, courts may consider “docket  
8 congestion and time to trial between the transferee and transferor districts” when deciding  
9 whether transfer is in the interests of justice. *Decker*, 805 F.2d at 843; *see* Opp’n at 21 (plaintiffs  
10 listing this factor but not analyzing it).

11 The court *sua sponte* judicially notices the Federal Court Management Statistics  
12 published by the Administrative Office of the Courts.<sup>3</sup> *See Balanced Body Univ., LLC v.*  
13 *Zahourek Sys., Inc.*, No. 13-1606, 2014 WL 744105, at \*4 (E.D. Cal. Feb. 24, 2014) (doing the  
14 same); *Cook v. Hartford*, No. 12-0019, 2012 WL 2921198, at \*1 (E.D. Cal. July 17, 2012)  
15 (same). As of March 31, 2018, these reports show that congestion currently is far greater in the  
16 Eastern District of California, reflecting the ongoing need for creation of new judgeships, than in  
17 the District of South Carolina: The median time from filing to trial for civil cases in South  
18 Carolina is 21.1 months, and from filing to disposition otherwise is 8.7 months; the corresponding  
19 figures here are 44.8 months and 10.2 months. These data on balance favor transfer.

#### 20 IV. CONCLUSION

21 Besides plaintiffs’ choice of forum, which weighs against transfer, the relevant  
22 factors on balance strongly favor transfer if they are not neutral. Accordingly, in the interests of  
23 justice and fairness to the parties and witnesses, the court GRANTS defendants’ motions to  
24 transfer under 28 U.S.C. § 1404(a). The Clerk of the Court is DIRECTED to transfer this case to  
25 the District of South Carolina. Defendants’ motions to dismiss are DENIED as MOOT.

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28 <sup>3</sup> [http://www.uscourts.gov/sites/default/files/data\\_tables/fcms\\_na\\_distprofile0331.2018.pdf](http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2018.pdf) (last  
visited on Aug. 17, 2018).

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IT IS SO ORDERED.

This resolves ECF Nos. 58, 66, 67.

DATED: August 20, 2018.

  
UNITED STATES DISTRICT JUDGE